

420.0000 PHOTOGRAPHERS, PHOTOSTAT PRODUCERS, PHOTO FINISHERS AND X-RAY LABORATORIES—Regulation 1528

See also Motion Pictures. Documents and records, furnishing copies of as sale or service, see also Service Enterprises Generally.

(a) IN GENERAL

420.0040 Photographers—In General—Aerial Photographs and Photomaps (Controlled Mosaics).

Aerial photographs are photographs of objects, ground areas, highways, etc., taken from the air. Aerial photographs are produced by use of airborne equipment and the usual photographic processes and carry distortions as to scale and as to positions of objects on the photographs. They are distinguished from photomaps in that the photomap is one of the end products of an aerial survey using precise engineering procedures including the establishment or identification of control points of latitude and longitude, the computation of engineering data by stereoscopic measurements and the rectification of photographic images. The furnishing of aerial photographs is a sale of tangible personal property. The sales price of the aerial photograph would be the gross receipts for furnishing the photographs with no deduction for flight costs, photographer's time, material, etc.

Aerial surveys are airborne surveys of ground areas for the purpose of (1) obtaining engineering data with respect to ground surfaces, contours, and improvements; (2) obtaining data with respect to magnetic fields and intensities; or (3) obtaining gravitational data. Aerial surveys are distinguished from flights made for the purpose of producing aerial photographs or mosaics (noncontrolled) in that an aerial survey is a professional undertaking employing precise engineering procedures and resulting in precise engineering reports or maps such as photomaps, planimetric maps, topographic maps, magnetic maps, and gravimetric maps. Receipts from aerial surveys are not taxable whether the results of such surveys are transmitted by means of photomaps or by means of tape, disc, or other computer-generated output.

Engineering services are the services involved in a survey or mapping project which has as its end the preparation of a map to conform with geodetic or other control and include the establishment of control points of latitude and longitude, identification of the points on photographs and computations of distances between points and elevations to precise engineering specifications through the use of engineering formulas and stereoscopic measurement. Persons who conduct surveys requiring engineering services are the consumers of the tangible personal property used in connection therewith including the maps, reports, and other materials furnished the client.

Mosaics (noncontrolled) are made by assembling vertical aerial photographs of approximately the same scale representing contiguous areas, matched at common points. The composite photograph of such assemblies is called a mosaic or noncontrolled mosaic. It is distinguished from a photomap in that the mosaic is not precisely engineered and is intended as a visual representation of the area rather than a presentation of exact engineering data. Gross receipts for furnishing mosaics are receipts from the sale of tangible personal property.

Photomaps are one of the principal end products of aerial surveys using precise engineering procedures, including the establishment of control points of latitude and longitude, the computation of engineering data by stereoscopic measurements, the exact rectification of photographic images, and the preparation of a photographic map showing geophysical data and geographic positions true within minute tolerance. They are distinguished from aerial photographs in that aerial photographs are merely visual representations not intended to present exact engineering data and not prepared by professional procedures such as would produce dependable engineering data. The aerial survey resulting in a photomap uses a substantial amount of professional engineering services and results in engineering data; the production of an aerial photograph requires the use of aircraft and crew, photographic equipment, and photographers but no professional engineers and results in a mere picture or group of pictures. Receipts from conducting an aerial survey and furnishing photomaps are considered charges for rendering professional services and the aerial surveyor is the consumer of the tangible personal property used in the survey and the reports, charts, and photomaps furnished the client in connection with the survey.

Reproductions of maps, that is, copies printed from an original of a hand-drawn map or a photomap, are regarded as self-consumed tangible personal property only if such reproductions are furnished pursuant to an original contract involving engineering services. Receipts from the transfer of reproductions under such circumstances are not subject to the tax. 9/26/72; 12/31/73; 9/24/91.

[420.0045](#) **Aerial Surveys.** The transfer of mylar negatives produced for aerial surveys is a transfer of tangible personal property and tax applies to charges for such negatives. The true object of the purchaser of the negatives is not the information on or in the negatives but the negatives themselves. The aerial photographer merely flies the aircraft as necessary to properly use the highly sophisticated camera and other equipment so as to perform the photographic services and thereafter produce negatives. The photographer does not produce any final product map. He merely produces an intermediate working product used by engineering companies to produce engineered maps. The fact that the mylar negatives do not contain distortions does not result in them constituting photo maps. (Annotation 420.0040.) 5/14/92.

[420.0072](#) **Copies of Public Records.** The furnishing of copies by a county of certain public records which are required to be furnished under sections 6256 and 6257 of the Government Code are exempt from sales tax notwithstanding the fact that there may be no statute or ordinance setting forth the fees that are to be charged for such copies. The county merely charges a reasonable fee.

However, the exemption does not extend to multiple copies. If a person wants more than one copy of the document, the charge for making the additional copies would be subject to tax. This is based on the fact that section 6256 of the Government Code only requires that a single copy be supplied. 5/18/72.

420.0080 **Coupon Charge and Handling Fee.** Charges for photographs which included the charge for a coupon and handling fee were subject to sales tax because the total amount represented the gross receipts from the sale of the photographs. 4/13/70.

[420.0082](#) **Creating New Print.** A customer provides a photographer with a photograph of his wife in which one of his wife's eyes was closed, and he wanted it opened. The photographer created a computer generated image, opened the eye, and printed the image to photographic film. The photographer used the negative to make a finished print to sell to the customer. In this case, tax applies to the photographer's entire charge, including the charge to alter the customer's print, because it was not merely a repair of the customer's defective print; rather, it resulted in the sale of a new print. Also, the photographer is the consumer of the materials used to create the negative and sales or use tax is due on the sales price to the photographer. If the computer created image on disk is sent to an outside company to create the negative for the photographer, the charge made to the photographer for creating the negative is subject to sales or use tax. 2/17/95.

[420.0085](#) **Departmental Manuals and Photograph Reprints.** A state agency sells three categories of property: (1) manuals and guides primarily intended for internal or allied agency use, (2) manuals and handbooks primarily intended for public sale and use, and (3) photograph reprints of traffic accidents.

In general, tax does not apply to charges for copies which the agency is required by law to furnish including any documents requested pursuant to Public Records Act. Sales of documents not requested pursuant to the Public Records Act are subject to tax. Therefore, the sales of the manuals and guides designed for public use are subject to tax unless they are the result of a specific request pursuant to the Public Records Act.

Since requests for photograph reprints are pursuant to the Public Records Acts, sales of such reprints are not subject to tax. The state agency should pay tax reimbursement to its vendors or pay use tax on its acquisition of the reprints. It may include the cost of this tax expense when it bills the requester but may not separately state an amount as tax, tax reimbursement, or the like. 8/15/80.

420.0090 **Photographers—Rental of Transparencies.** The rental of photographic transparencies that have been developed from exposed raw film is taxable as a sale. The rental is taxable because the property is not rented in the same form as acquired by the lessor who purchased and exposed the raw film. The item

being leased is the raw film which was exposed by the photographer and, accordingly, changed substantially in form. This application of tax is correct even though the lessor may have paid sales tax reimbursement to the lab that developed the slide.

On the other hand, if the item leased is a print of the exposed film which was purchased tax paid from the processing laboratory, the print would be leased in substantially the same form as acquired. 1/10/91.

420.0096 Employee or Independent Contractor. A photographer works for a dating service. Although the dating service sets the photographer's hours and provides the studio facility, they treat the photographer for income tax purposes as an independent contractor. When a customer applies for service with the dating service, there is a set charge which involves the development of a biography and photo for placement in the dating service's directory which is for the use of customers. When the customer signs up for the dating service, he completes a standard biographical sketch and part of the fee is collected at that time. The balance is collected when the photo is taken.

The dating service sets an appointment time for the customer to have his photo taken. When the photographer takes the photo, she collects the balance of the dating service fee (made payable to the photographer). The photographer then pays over to the dating service a fixed amount of the charge and provides the photograph to the dating service for use in the directory. The amount retained by the photographer is her payment for shooting and providing the photos to the dating service. No photos are provided to the customers as part of the charge made. However, if the customer is interested in prints of the photo taken, the dating service refers him back to the photographer who then makes a sale of the prints to the customer.

Based on the facts presented, the photographer is an independent contractor and not an employee. Thus, the photographer contracts to sell photographs to the dating service and the gross receipts consist of the amount retained by the photographer from the payment that the photographer accepts on behalf of the dating service from its customer. Sales tax, of course, is due on any amount that the customer pays to the photographer for prints sold to that customer. 10/17/96.

420.0100 Extra Poses. Separately stated charges labeled "extra poses", which a portrait photographer makes in order to reimburse himself/herself for cost of retouching negatives and extra sitting expenses, represent overhead costs incurred in the production of photographic portraits which he/she sells. Accordingly, such charges are includable in the taxable gross receipts of the photographic portraits. 11/21/67.

420.0110 Film Used to Produce Driver's Licenses. A taxpayer has a contract with the California Department of Motor Vehicles (DMV) to print state driver's licenses. Under the contract, the taxpayer is to provide 35mm color negative film and equipment to DMV. DMV employees expose the film and return it to the taxpayer. The taxpayer develops the film and makes a positive which becomes part of the driver's licenses produced by the taxpayer for DMV. The license and a microfilm copy are returned to DMV and the negatives are stored by taxpayer until DMV requests that they be destroyed.

Since there was no separate statement on the bill for the film and the contract specifically stated that taxpayer is to retain title to the film, the film was not sold to DMV prior to any use by the taxpayer. The fact that, by contract and for security reasons, DMV severely restricted the use of the film once the licenses were printed does not determine which entity holds title to the film. Accordingly, tax applies to the purchase price of the film to the taxpayer. 9/30/91.

420.0125 Internegative and Print. The sale by a photographer of an internegative and a print shipped to an out-of-state customer pursuant to the contract of sale is exempt as a sale in interstate commerce.

However, since the photographer makes a print from the internegative prior to the exempt sale in interstate commerce, the sale of the internegative to the photographer or the photographer's use of the internegative is subject to sales or use tax.

Alternatively, if the photographer were to transfer title to the negative prior to any use, the sale to the photographer would be a sale for resale but the photographer's sale to the customer would be completed in this state prior to any interstate shipment. The photographer's sale of the internegative would thus be a taxable retail sale in this state.

However, the sale of the print would not be subject to tax if the sale meets the requirements of the interstate commerce exemption provided the photographer does not make any use of the print in this state. 1/21/94.

[420.0130](#) **Landsat Mosaics.** Landsat is a remote sensing satellite which produces pictures of the earth's surface. Landsat mosaics are constructed by skilled technicians registering the individual scenes to a known map projection. They carefully overlap the scenes so that features seen on the earth's surface form a much larger, continuous image. They splice all of the scenes together, combining them into one or more sheets. The mosaics show a large area of the earth and are used for regional planning. All work is done to a customer's specifications.

Since the above work does not involve the services of a professional engineer, the vendor is making a sale of tangible personal property when performing this work. The work is similar to mosaics (noncontrolled) prepared by assembling vertical aerial photographs. (Annotation 420.0040.) 3/16/89.

[420.0132](#) **Lease of Photograph.** A person who is in the business of providing photos of a variety of subjects sells the right to publish the photo. The sale of such rights is a "lease" for sale and use tax purposes. If the property furnished is a print on which tax has been paid to the film processing lab, the lease of the print is not subject to tax as the property is leased in substantially the same form as acquired and tax has been paid. However, if the property furnished is a transparency, tax applies to the lease since it is not leased in substantially the same form as acquired. 2/26/86.

420.0134 **Microfiche Copies of X-Ray Films.** Because of limited on-site storage areas and the prohibitive cost of accessing x-ray films stored off-site, hospitals are replacing x-ray films with microfiche images. The replacement is made several years after the x-rays are produced. Since the microfiche copies are primarily made to replace the existing x-ray film with a smaller one to save space rather than for direct purpose of diagnosing medical or dental conditions of human beings, the total charge for such microfiche copies is subject to tax. 6/16/88.

[420.0140](#) **Microfilm.** Microfilm, which is itself sold to customers and which is not used for the purpose of producing prints for sale to customers, may be purchased ex-tax under a resale certificate. 1/5/61.

[420.0149](#) **Microfilm with and without Processing.** Retail sales of black and white microfilm sold without processing are subject to tax. Retail sales of black and white microfilm sold with processing and billed lump sum are subject to tax on the entire amount charged. Retail sales of black and white microfilm sold with processing with the charges for the microfilm and processing separately stated are subject to tax on the entire amount. The sale of the microfilm itself is a straightforward transfer of title to tangible personal property for a consideration. The processing is a processing of customer-furnished property. This is fabrication labor which is regarded as a sale under section 6006(b) of the Revenue and Taxation Code.

The exclusion provided for developing negatives only applies when the processing involves the use of separate negatives and processing. It does not apply to processing microfilm or the reverse processing method. 6/16/71.

420.0155 **Microfilming Charges.** Company A engages Company B to perform mail room services consisting of receiving, sorting, opening, and batching mail documents. A also engages Company C to microfilm documents. C is owned by B and uses the same employees to do the microfilming. The charge for microfilming is a taxable sale of tangible personal property and includes the charges for services that are part of that sale, such as related mail room services. However, the charge for the mail room services will not be subject to tax if: A contracts separately with B and C; statutory requirements have been met in forming B and C as separate entities; B and C's use of the same employees is in accordance with applicable

law and with each company's by-laws; and the charge for the mail room services is not increased by decreasing the microfilming charge. 12/6/94.

[420.0160](#) **Microfilming of Records.** Sales tax applies to the entire charge made for microfilming records. 7/9/53.

420.0165 Negatives Used to Make Photo Maps. Use tax applies to the purchase of "ortho negatives" from an unpermitted out-of-state vendor, even though the negative contains an image of a photo map. The transfer of a photo map is not a sale, but rather the transfer of intangible information developed by aerial survey. The photo map is the means by which the intangible survey data is transferred, while the ortho negative is a manufacturing aid used to produce the photo map. 2/7/91.

420.0166 Photocopying Hospital Records. A person engaged in the photocopying business contracts with hospital clients to photocopy and provide hospital records sought by third parties such as patients, health care providers, and attorneys. The person furnishes the hospitals with computerized billings for the photocopies, which the hospitals send to third parties. The hospitals retain collection responsibilities with respect to the billings.

Under such an arrangement, the relationship between the photocopy business and the hospital is not that of principal and agent but rather principal and independent contractor. The hospital is the retailer under these circumstances and should furnish the photocopying business with a resale certificate in connection with these sales. The sale of these photocopies by the hospitals is subject to tax as provided under sections 1563 and 1158 of the Evidence Code and as set forth under Regulation 1528(b)(2)(A). 5/24/84. (Am. 2004-2).

[420.0168](#) **Photograph Purchases for Resale.** A taxpayer maintains an inventory of photographs for copying by customers. In some instances, the customer selects a photograph, reproduces it and incorporates the reproduction into a product which the customer sells. The customer is the consumer of the photograph and the sale to the customer is a taxable retail sale.

In other cases the customer selects a photograph and purchases the reproduction rights, but does not actually reproduce it. Instead, the customer charges its client a fee for finding and furnishing the photograph. The client reproduces the photograph. The sale to the customer is a sale for resale. The sale by the customer to its client is the retail sale.

In other cases, the customer is unable to find a suitable photograph. The customer is billed a service fee to cover research costs. The customer then issues a billing to its client. Since there is no sale of tangible personal property, there is no tax. 11/4/93.

[420.0169](#) **Photographic Documentation Service.** A taxpayer photographs personal property and structures for possible insurance claims and tax purposes. The taxpayer supplies the film and performs the photography. It also stores the negative film (long term, no extra charge), and grants the customer the right to order prints (photos) of the images on negative film as required, for which there is a reasonable charge plus sales tax. A flat fee is charged for the original photo transaction.

Where the contract with the customer states that the film remains the taxpayer's property, the original photo documentation session would be a service transaction, not a sale and, thus, the charge for this session is nontaxable. The taxpayer is the consumer of the film and other property used in providing this service. On the other hand, where title to the film does not pass to the customer but slides are given to customer if the customer wishes as a "free service," then the transfer of possession of the slides or any tangible product of the original session would result in the entire charge being taxable. In the same situation, if the customer is allowed to buy the slides for a small charge rather than receiving them "free of charge," the sale of the slides would be taxable. The tax also would apply to the entire charge to the customer for the original photo session. 2/3/81.

[420.0170](#) **Photographic Image.** The transfer of a photograph through a remote electronic wire service is not a transfer of tangible personal property. Charges for such service is nontaxable.

“Remote” means that the transmission must occur from premises other than that of the receiver. 11/26/91.

420.0173 Photographs. A photographer provides a newspaper or magazine publisher with photographs that are reproduced in the relevant publication which is subject to sales tax when sold.

Since the publisher uses the photograph in creating the publication, the sale or lease of the photograph in this state is a retail sale subject to sales or use tax. This is true even though the sale of the newspaper or periodicals by the publisher is also subject to sales tax. A photograph does not become an ingredient or component part of the publication merely because the photographic image is reproduced in the publication.

The sale of photographs to an advertising agency is also a retail sale unless the advertising agency is purchasing the photographs for resale to its customer prior to use. In that case, a resale certificate is required stating that the specific property is being purchased for resale in the regular course of business.

The photographer may purchase for resale slide transparency film that is processed into slide photographs prepared as “speculative stock shots” and held solely for resale in the regular course of business provided no use is made of the film prior to resale. If the photographer uses the slides to make positives, the sale to the photographer is a retail sale because the film will be used as a manufacturing aid in producing prints.

If the photographer makes any use of property other than demonstration and display for purpose of resale, the photographer is responsible for reporting and paying use tax measured by the sale price of the property to the photographer. The destruction of the “speculative stock shots” which did not sell is not considered a taxable use. 9/21/92.

420.0175 Photographs for Shoe Catalogs. Photographer contracts to take photographs for use in a catalog of shoes. The photographer provides only a studio, film, and a camera. Out of approximately 100 photographs taken, only about 15 are ultimately used in the catalog. The remainder are taken for light placements or test shots.

Although the photographer’s charge includes a charge for many photographs not used, Sales and Use Tax Law section 6012(a) require the photographer to include the total amount received as taxable. 9/24/91.

420.0176 Photography Sales on Board Cruise Ships. A business operates aboard a cruise ship that makes daily trips from San Diego to Ensenada, Mexico. It takes photographs of passengers and develops, prints, displays and sells the photographs from its retail store on the ship. It also sells cameras, film, frames, and batteries from the store. The business also purchases photographic equipment outside California for use on the ship.

Property which is sold to customers, including materials which become a component part of photographs, may be purchased by the business for resale. Sales tax applies to the sale of such property to customers on sales made within the three mile limit. If the sales occur outside the state, the business is required to collect use tax from California customers unless they certify that the property will be used only at a specified point outside the state.

Materials used in the process of making photographs and which do not become an ingredient or component part thereof should not be purchased for resale.

Photo equipment purchased outside the state for use aboard the ship is subject to tax if the first functional use is in the state or if the principal use (including storage) is inside the state. 11/10/94.

420.0177 Pick-up and Delivery of Photocopies. When a person is not authorized to purchase photocopies from law enforcement agencies, the person acquiring them is acting on behalf of the authorized person. Accordingly, the pick-up and delivery charges in connection with acquiring such photocopies are excluded from the measure of tax. The transfer of the photocopy by the governmental agency also is not subject to tax because it is a mandatory act under the related statute. 3/25/70.

420.0178 Preparation and Service of Subpoenas. A taxpayer bills its customer a “basic charge” and a “subpoena prep” charge in connection with serving a subpoena and copying the records subpoenaed. The taxpayer’s “basic charge” is subject to tax since it is a service which is a part of the sale of the photocopies made following the service of the subpoena duces tecum. However, regardless of what a taxpayer calls the preparation and service of subpoenas, such charges which are fairly allocated to the actual preparation of a subpoena, as well as the service of subpoenas, are nontaxable charges. It does not matter whether the charge is referred to as a “service charge” or as “subpoena preparation” charge. 7/25/88.

420.0179 Radar Images. The custom processing, dodging, printing, and mosaicking of existing radar film into digitally plotted film positives is a sale of tangible personal property when such work does not involve the services of a professional engineer. 3/6/89.

420.0180 Reproduction Rights. An additional charge by a professional photographer for rights to reproduce the photograph sold is includable in the photographer’s gross receipts. The theory is that the intangible right to use the photograph adheres to the personal property being sold. 9/24/64.

420.0220 Reproduction Rights. Charge for use of photographs by publication companies for reproduction, even though returned after one use, is regarded as a sale if the photograph has been treated so harshly that it is not reusable after its return to the photographer. (Effective July 15, 1991, leases for one time use of photographs to newspapers are subject to tax.) 11/5/52.

420.0260 Reproduction Rights. A charge for the right to use a photograph for reproduction purposes is part of gross receipts subject to tax without regard to the manner in which the charge is segregated. It is also immaterial whether the right of reproduction granted upon the sale of the photograph is unlimited or restricted. This is by analogy to *Thys et al. v. State of Washington*, 199 P. 2d 68. In that case, the court held that a yearly charge designated in the contract as “royalty” for the right to use a machine could not be separated from the amount designated as “purchase price” paid to obtain title. The total amount paid by the purchaser is considered the selling price of the machine and taxable as such. 5/26/50. (Am. 99–2).

420.0289 Retailer Donates Portion of Sales Price. A photographer sells packages of photographs for \$17.00. The photographer has an agreement with the Little League that he will donate \$2.00 from the sale of each package to the Little League.

Since the purchaser cannot purchase a package for \$15.00 by withholding the \$2.00 “donation,” the selling price for each package is \$17.00. Thus, the entire charge for the package is subject to tax. 9/22/95.

420.0295 Services Performed in Microfilming Records. As a part of microfilming customer records, taxpayer reviews files/records to select records for microfilming. Taxpayer also removes paper clips, staples, etc., and repairs torn documents. The service is charged on an hourly rate.

Since the preparation of the documents is necessary in order to produce the microfilm, the charge for the preparation is includable in the gross receipts of the sale of the microfilm. 12/2/91.

420.0300 Sitting Fees. Sitting fees charged by portrait photographers are taxable when finished pictures are purchased. If no pictures are obtained such fees are nontaxable as a service fee. Where a customer retains the proofs, all sitting fees should be considered as the taxable selling price of the proofs. 4/24/57.

420.0303 Sitting Fees—Make Up Artists. A beauty salon contracts with its customer to provide hairstyling, make-up, and one photograph for \$29.95. The taxpayer provides the make-up artist and photographer who will take pictures of the salon’s client and give her the one “sample” photograph. The taxpayer receives \$9.95 which it characterizes as “sitting fees,” contending that it is selling a nontaxable makeover service and that the “sample photograph” is free.

The firm’s business logo indicates it is in the glamour photography business. Additionally, most of its income is derived from selling additional photographs. The facts, therefore, indicate that the makeover is

incidental to the transfer of the photograph. The entire amount received for the “sitting fee” is taxable. 6/18/97.

[420.0310](#) **Still Photography.** A company, whose seller’s permit indicates that it is a commercial artist selling photographic images and videos, requested information regarding the application of law to the following questions regarding still photography.

(1) Can one photographer purchase another photographer’s photographs using a resale certificate?

If the actual photograph purchased by the photographer will be resold to the client prior to any use by the photographer or if it will be physically incorporated into the property produced by the agency that will be resold, the photographer may purchase the photograph ex-tax by issuing a resale certificate.

(2) Can one photographer purchase another photographer’s labor using a resale certificate?

If the photographer provides all materials used by the other photographer to produce tangible personal property that will be sold to the client prior to any use, there is no “sale” since only fabrication for a consumer is a “sale.” Since the second photographer is not making a “sale” to the photographer, he/she is not really making a sale for resale. Nevertheless, the best way to prove that the labor was not for a consumer is to take resale certificate.

(3) Photographer A who has an out-of-state client, hires Photographer B to shoot photos for his/her client. Does Photographer B charge Photographer A sales tax?

If the photos will be resold or will be incorporated into the property to be resold prior to any use, Photographer A may purchase the photos ex-tax by providing a resale certificate.

(4) Can a photographer use his/her resale certificate to purchase photographic materials that are to be sold exclusively out of state?

Yes, provided the photographer makes no use of the materials prior to the resale.

(5) If a client leases the rights to reproduce photographic images but the photographer maintains possession of the original images, does the photographer charge sales tax to the client?

If the photographer retains the negatives and transfers to the lessee a photograph, some tangible personal property is being transferred. If the client is not obligated to return the same photograph provided to the lessor, the transfer of the photograph would be a sale and subject to tax. If the client was required to return the photograph, it would be a lease and tax applies as explained in Regulation 1660.

(6) If a client supplies all the photographic materials to the photographer, does the photographer charge sales tax for his/her labor?

Under the definition of a sale, section 6006 (b), the photographer is making a “sale” of the photographs and that sale would be taxable even though all of the materials may have been provided by the client.

(7) Does a photographer’s assistant have to charge the photographer sales tax for his/ her labor?

Assuming the assistant is not an employee of the photographer, the application of tax depends upon whether the assistant is making a retail sale of tangible personal property to the photographer. If the sale is at retail, the sales tax applies. If the photographer resells property purchased from an assistant prior to any use by the photographer, the photographer may purchase the property ex-tax for resale. The photographer’s full charge for the sale to his client is subject to tax, with no deductions on account of the amount paid for the services provided by the assistant in the production of the property.

(8) Does the photographer have to collect sales tax on a photographer’s assistant’s labor?

As stated in Number 7, a photographer cannot deduct his labor costs from the selling price before computing sales tax. Sales tax is due on the entire selling price of retail sales of tangible personal property.

(9) On a large photography shoot involving labor of several positions hired by the photographer (i.e., make up, models, stylists, etc.) does the photographer have to collect sales tax on the labor of all these positions?

As stated above, the measure of tax is based upon the gross receipts of a retail sale. Tax applies to charges for services rendered that represent services that are a part of a sale of the property, or a labor or service cost in the production of the property. These positions are an expense in the creation of the property to be sold to the client and thus the costs are included in the measure of tax.

(10) Should sales tax be collected on postage and handling which includes the cost of postage and a markup on envelopes and labor?

If a separately stated charge is made designated “postage and handling”, only that portion of the charge which represents actual postage may be excluded from the measure of tax. 10/20/93.

420.0320 Test Film—Spoilage of Film. A person engaged in reproducing images on raw film is the consumer of film used by him for the purpose of conducting tests to adjust the equipment in order to attain the final picture negative or used in any of the intermediate steps. However, if the original intent is to sell particular raw film to the customer and if the film is discarded only because of spoilage, then the film is not considered consumed. 7/9/58.

420.0325 Third Party Furnishing Copies of Records. A hospital receives a subpoena or authorization letter to furnish copies of records. The hospital sends the subpoena or authorization letter to a copying service and makes its records available, at no charge, to the copying service. The copying service then performs the copying, delivers the copies to the requesting party, and bills the requesting party. Given such facts, tax applies to all charges by the copying service to the requesting party. Since the hospital did not make any charge to the copying service, the copying service cannot make a nontaxable statutory charge pursuant to sections 1158 or 1563 of the Evidence Code, regardless of how such charge is stated to the requesting party. 11/30/88.

420.0340 Unreturned Prints. Where a photographer takes photographs of school pupils, has the negatives developed and sends the prints to the school for forwarding to parents of the pupils, the photographer is not liable for tax on the cost of prints which are accepted but not paid for by the parents. 12/14/65.

420.0343 Unexposed Film Received in Connection with Film Processing. A photo finisher distributes unexposed rolls of photographic film to customers who contract to have the photo finisher develop exposed film and to produce prints therefrom. The unexposed roll of film is given to the customer at the time he places the order for developing and prints. A separate charge is made for the prints and for the developing. The developing charge is claimed to be nontaxable pursuant to Regulation 1528(b)(3)(a). No specific charge is made for the unexposed film. In some instances the customer fails to pick up the order and pay the agreed charges. No attempt is made to collect these charges.

Under the above situation, the unexposed film, the finished prints, and the developing service all represent consideration received by the customer in exchange for the payment of the agreed contract price. While the customer receives the unexposed film prior to the time he receives delivery of the prints and developing service, it is nevertheless clear that the customer receives the unexposed film only if he agrees to pay the price specified for the prints and the developing and not as a gratuity. Accordingly, the unexposed film must be regarded as sold rather than self consumed. This conclusion is not altered by the failure of the photo finisher to enforce collection with respect to persons who fail to pick up their finished prints and negatives. The failure to collect the contract price on these transactions is based on business expediency rather than the absence of a remedy.

The delivery of the unexposed film is considered to be a premium under Regulation 1670(c). This section also provides for an allocation of gross receipts to the retail sale of a premium sold with a food product or other item not subject to sales tax. Since the customer is required to pay the entire contract price in order to obtain the premium, it is consistent with Regulation 1670(c) to allocate a portion of the total contract price to the unexposed roll of film sold and delivered as part of the contract. 4/17/70.

(b) PROCESSING, RETOUCHING, ETC.

420.0345 Chemical Solutions. The following chemicals introduced into the nine bath system of negative development of microfiche (termed the full reversal process) may be purchased for resale, since the primary purpose is incorporation into the finished product:

- (1) FR AUTOCOM 1st developer
- (2) FR AUTOCOM 2nd developer
- (3) FR AUTOCOM fixer

Insufficient information was supplied to establish that any of the balance of the chemicals used in the process, were purchased for the primary purpose of incorporation into the microfiche. The processor is not regarded as having made a taxable use of property simply because the property performs some processing in its course of its incorporation into the final product. On the other hand, property used in the course of processing is not regarded as having been resold without use simply because some portion of it remains incidentally as part of the final product (*American Distilling Co. v. State Board of Equalization* (1942), 55 Cal.App.2d 799). It is the taxpayer's responsibility to establish that the primary purpose of property, used in the manufacturing process, was for incorporation into the finished article in order to show that the property can be purchased without tax "for resale." (See *Burroughs Corp. v. State Board of Equalization* (1984), 153 Cal.App.3d 1152.) 1/24/90.

420.0348 Color Overhead Transparencies. A firm prepares color overhead transparencies, based on hard copy outline notes, it receives from the customer. The true object of the contract is the transparencies produced and the total charge is subject to tax. 12/21/92.

420.0360 Color Film. Charges for developing negatives are not taxable, but if prints are furnished the entire charge is taxable unless a separate charge for developing negatives is made. Development of film by the reverse process method is not the negative development of film. Tax applies to charges for development of film by the reverse process method. 1/13/50.

420.0380 Color Film. Color film sold to a photographer which he exposes and sells as a finished picture is a sale for resale and not subject to the tax. 5/11/50.

420.0420 Coloring or Tinting of Photographs. Even if separately stated, tinting charges are taxable where the tinter is also the printer of the pictures and is not merely a finisher tinting pictures furnished by the customer. 4/8/52.

420.0440 Color Photo Finishing. Dye couplers and coupling agents used in color photo finishing which, as a matter of fact, become a component part of the finished product sold to the consumer may be purchased tax-exempt for resale. 5/26/64.

420.0448 Copyright Effects on Retouching Charges. For sales tax purposes, the fact that a customer obtains an intangible copyright interest in the image on a negative when the customer's image is reproduced on the negative does not transfer ownership of the tangible negative to the customer. Accordingly, when a third party retouches negatives for a photographer, such charges are for taxable retail fabrication labor type "sales." 5/10/85.

[420.0480](#) **Developing—Chemicals Used in.** Kodak Film Developer SD-35 and Ektachrome Film Developer SD-39 become incorporated in the finished product and are exempt. 3/21/60.

[420.0500](#) **Developing—Chemicals Used in Negative/Positive Process.** The correct interpretation of Regulation 1528(b) is that, when the negative/positive process is used by a photofinisher to develop exposed film furnished by the customer, sales tax applies to the sale to the photofinisher of all chemicals which are used in developing the film to a negative, regardless of how the photofinisher bills his customer. The photofinisher uses the negatives, and the chemicals incorporated therein, to make prints prior to transferring the negatives to his customer. This intervening use makes the photofinisher the consumer of such chemicals, even though the chemicals may ultimately be transferred to the customer as part of the negatives. 10/31/69.

[420.0520](#) **Dicolamine.** Dicolamine used in a method of color film processing becomes incorporated into the finished product, and accordingly, may be purchased tax-free for resale. 11/10/55.

[420.0540](#) **“Dry-Developing” Method of Producing Diazotype Prints.** Diazotype prints are produced by means of the “dry-developing” or “ammonia-developing” process. The first step in this process consists of exposing sensitized paper to ultra violet light through a master print. Next, the exposed paper is treated with aqua-ammonia vapor, which combines with an acidic stabilizer on the sensitized paper, enabling unexposed Diazonium salts on the sensitized surface to combine with a coupler to form a dye image. Sales of ammonia for use in producing, by the above described method, prints which are sold are exempt sales for resale. 12/9/64.

[420.0553](#) **Kodak Pro-Star Chemicals.** Kodak Pro-Star Plus Fixer and Kodak Pro-Star Developer, which are used in the developing of microfilm, are consumed in the development process and do not become physically incorporated in the manufactured product, the microfilm. Sale of the above chemicals to microfilm developers are subject to sales tax. 6/26/86.

[420.0560](#) **Light Test Stock Used in Processing Film.** A film processing laboratory which uses light test film stock to adjust or balance the lighting of the customer’s film in order to produce the most desirable print is the consumer of the film stock and is liable for tax measured by the cost thereof. 1/3/68.

[420.0580](#) **Negatives.** Charges for the development of Kodacolor negatives, if separately stated from the charges for making positive color prints, are not taxable as receipts from the sale of tangible personal property. 9/22/64.

420.0585 **Photographers—Retouching.** Tax applies to charges for retouching, coloring, and tinting customer owned pictures which are new; however, if the pictures are not new and the retouching, coloring and tinting is only done to repair or restore the picture back to its original condition, the charge is not subject to tax. 9/12/91.

[420.0590](#)

[420.0595](#) **Photographic Chemicals.** The following chemicals are manufacturing aids and may not be purchased for resale by photographic studios or photo finishers:

Kodak Ektacolor Bleach-Fax and Replenisher for Process RA-4 or RA-4NP
Flexicolor Bleach II, Regenerator
Flexicolor Bleach II, NR Replenisher
Flexicolor Developer, Starter LORR
Dektomatic Developer, Replenisher Concentrate

The following products are incorporated into the final product to be sold and may be purchased for resale by photographic studios and photofinishers:

Kodak Ektacolor Stabilizer and Replenisher for Process RA-4 or RA-4NP

Dektomatic Fix and Replenisher
Dektomatic Fix, Developer Replenisher
Kodak Flexicolor ML Stabilizer and Replenisher
Flexicolor Developer, Replenisher LORR 9/25/89.

[420.0600](#) **Retouching.** Photographers are ordinarily consumers of negatives and retailers of positives. Therefore, negative retouching sold to commercial photographers is taxable fabrication labor. However, retouching the positive or print when purchased by the photographer for resale is not subject to tax. 10/16/64.

[420.0620](#) **Retouching Negatives.** A portrait photographer is the consumer of negatives from which he makes photographic portraits. Retouching of the negatives constitutes processing under section 6006(b).

Accordingly the charges made to the portrait photographer for retouching the negatives are subject to sales tax. 11/21/67.

[420.0640](#) **Retouching Negatives.** A person in the business of retouching negatives for a portrait photographer is engaged in taxable processing of tangible personal property furnished by a consumer, under section 6006(b) where the photographer does not sell the negative to his customer. Where the photographer makes a separate charge to his customer for such retouched negative, he is regarded as selling the negative, and the retouching is regarded as nontaxable fabrication of property for resale. 11/3/67.

[420.0650](#) **Retouching Prints.** If a photographer retouches a new photograph for a customer, the charge is includable in the photographer's taxable gross receipts, because the charge is for labor to prepare the photograph for sale. If that processing is done on a customer's new photograph, the charge also is subject to sales tax as part of the labor to complete the finished photograph.

If retouching is done on the customers photograph to restore the photograph and bring it back to its original condition, the charge is not subject to tax. 2/17/95.

[420.0660](#) **“Reverse Processing.”** The developing of film by the reverse processing method, i.e., develop the film to a negative and reverse it into a positive, is regarded as fabrication of customer-furnished property, and the entire charge is taxable. 6/29/55.

(c) X-RAY FILMS AND RADIOGRAPHS.

[420.0675](#) **Charges for X-Rays by Veterinarians.** Veterinarians retain title and possession of x-ray films which they produce for the diagnosis of the animals they treat. Therefore, a veterinarian is considered a consumer of the materials and supplies he uses to produce diagnostic x-ray films for his own use, provided the veterinarian does not transfer title or possession of the x-ray film to his customers. Also, a sale does not occur when there is a temporary transfer of possession of x-ray films between veterinarians because, by law, a veterinarian must transfer possession of x-ray films to another veterinarian making a written request for such films with the permission of the animal's owner. The transferred film must be returned to the vendor who originally treated the animal within a reasonable time.

A taxable sale or lease occurs when a producer of x-ray films (e.g., an x-ray lab) furnishes x-ray films of animals, for a consideration, to veterinarians who order them. The producer is a retailer of tangible personal property. Such a producer of x-rays is considered a retailer of tangible personal property even though it may furnish a diagnosis or report to the veterinarian along with the x-ray film, may retain title to the x-ray, and permanently store the film after utilization by the veterinarian. 2/8/84.

[420.0680](#) **Correction of Manufacturing Defects.** A taxpayer operates an inspection and certification service utilizing, among others, radiographic (x-ray) inspection procedures. The taxpayer also does fabrication and repair. If defects are found in the product, the taxpayer grinds out the defective area and corrects it by a welding process. Upon completion of the process, the taxpayer bills the customer for the inspection, for the corrections made (if any were needed), and for the number of x-ray films exposed and

examined in the process. The films may be delivered to the customer along with the inspected products and the certification.

Although the films are correctly purchased tax-paid by the taxpayer, their subsequent retail sale by the taxpayer after use in the inspection process is subject to tax in those cases where title or possession passes to the customer without credit for the tax paid on the purchase. The charge for correcting defects is taxable if the item is new as the correction would be a step in the process of fabricating the item into a finished, usable product. If the item was used, the correction of defect would be repair labor, not subject to tax. 6/19/80.

420.0686 Inspection Services. A firm engaged in the business of providing the following services is a consumer of x-ray film.

- (1) Testing and inspecting the customer's products.
- (2) X-raying the products.
- (3) Examining the x-ray film for possible defects in the product.
- (4) Preparing a report to its customer based on the results of the tests and the examination of the x-rays.

The primary purpose for purchasing the x-ray film is for use in the inspection service. Thus, the firm may not purchase the film for resale. Whether the subsequent sale of the x-ray film to the customer results in a taxable sale depends on further facts. If the customer purchases the x-ray film to make its own inspection, the sale is a retail sale. If the customer purchases the x-ray film merely to sell to its customer with no intervening use, the sale is nontaxable. 6/24/91.

420.0689 Microfiche Copies of X-Ray Film. Microfiche copies of X-Ray film do not qualify as an X-Ray film or photograph pursuant to section 6020. Persons who sell such copies are the retailers and tax applies to the total charge. 6/18/88.

420.0690 Photographs and X-Rays Used for Medical Diagnosis. Effective October 1, 1982, section 6020 of the Revenue and Taxation Code provides that tax applies to the sale of materials and supplies used in the production of x-rays and photographs which are used for medical or dental diagnosis of human beings and are not used for purely cosmetic purposes. Tax does not apply to the sale by the producers of x-rays or photographs to their customers, since the producer is deemed to be a consumer and not a retailer. The sale of x-rays used for the purpose of diagnosis of conditions of animals is no longer within section 6020 and is, therefore, subject to tax.

Accordingly, on their billings to customers, producers of x-rays or photographs should state the price for taxable x-rays or photographs separately from the price for nontaxable x-rays or photographs. If, however, the producer makes a lump sum charge for taxable and nontaxable x-rays or photographs, the Board shall make an allocation of the charges based on whatever information is available. 7/18/83.

420.0694 Producing Images on Paper. A contract calls for the use of ultrasound and/or computer assisted topography equipment for producing imaging paper which becomes the report itself, along with documentation upon how the imaging was produced. The invoicing separately states travel, film, equipment rental, pass through costs of equipment rented locally, technician labor, and systems operator labor.

Based on the fact that no professional interpretation or conclusions are provided and the imaging on paper becomes the report itself, which comes along with documentation of how the imaging was produced, the true object of the contract is to provide tangible personal property. Therefore, the total charge made is subject to tax with no deduction for the items separately stated on the invoice. 1/11/94.

[420.0697](#) **Radioscopy and Shooting Pictures of Food Products.** A contract calls for the inspection of food products possibly contaminated by foreign material. The process involves exposing the food products to radioscopy and “shooting pictures” of items that appear contaminated. The contract calls for a report to be issued. If no contaminated food is found, only a report is issued. If contaminated food is found, the film becomes part of the report. Invoicing reflects technical labor, equipment rental, travel expenses, and an unspecified materials fee.

In this case the true object of the contract is for the performance of a contaminated food report which is a service. The film is considered to be merely incidental to providing nontaxable services and there being no additional charge for providing the film, charges for the performance of such services would not be taxable. 1/11/94.

[420.0700](#) **X-Ray Film.** X-ray film purchased for resale, exposed and identified with specific footage of welded tubing used in missile and aircraft construction is not subject to use tax when sold with the tubing for resale, pursuant to specific orders from the customer. 10/13/64.

[420.0720](#) **X-Ray Films—Where Not Purchased for Diagnosis.** Section 6020 states that “Producers of X-ray films for the purpose of diagnosis are the consumers of materials and supplies used in the production thereof” refers to X-ray films produced for the diagnosis of conditions of the human body and does not relate to X-ray films produced for the inspection of metals and other similar purposes.

Accordingly, when X-ray laboratories furnish radiographs for such purposes as inspection of metals, the laboratory is the retailer and liable for payment of sales tax measured by the retail selling price of the radiographs. If a laboratory enters into a contract for the furnishing of an X-ray inspection service, there being no transfer of title to radiographs involved, charges for the performance of such an inspection service would not be taxable. 10/22/51.

[420.0740](#) **X-ray Pictures** sold at stipulated price to shipyards are taxable as are sales of pictures taken by exposure to gamma rays. 7/27/50.

420.0820 X-Ray Services—Structural Bridge. A taxpayer provides equipment, materials, and labor to perform x-rays on structural bridge components on-site. The contract calls for the transfer of film and documentation upon completion. Professional expertise is called for in the use of the equipment and the labor to shoot and develop the radiographs. There is no professional interpretation of the radiographs or film.

The true object of this contract was for the providing of tangible personal property in the form of x-ray film. Since the documentation, in the form of procedures manual, survey of radiation level and logs showing how each x-ray was shot, was part of the sale and was incidental to providing property, the total gross receipts are subject to sales tax. 1/11/94.

[420.0850](#) **X-Rays.** When a manufacturer chooses to x-ray its product to detect defects, the manufacturer is the consumer of the film even though the x-ray is subsequently sold with the product. When the x-ray is taken only upon the buyer’s request, the film may be purchased for resale even though it may incidentally be viewed to detect defects. 4/22/87; 7/10/96.

420.1200 X-Rays of Manufactured Property. Where a contract for manufactured property requires that the individual parts be x-rayed and that the radiographs be furnished to the customer along with the manufactured item as proof that the item meets specifications, the manufacturer may purchase x-ray film for resale. The examination of the radiograph by the manufacturer prior to shipment is not a taxable use by the manufacturer because the primary purpose of purchasing the film is to resell it to the customer. If either the radiograph or the part is defective, the film will be regarded as part of ordinary, unintended production losses in the same manner as the defective item. 10/5/86.